

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5808

Joint Petition for the transfer of control of NYNEX Mobile of)
Vermont Inc., a corporation providing service in the)
Burlington NECMA and which owns an 83.27% general)
partnership interest in the Vermont RSA Limited Partnership,)
to NYNEX Mobile Limited Partnership 1)

Order entered: 3/1/2000

I. INTRODUCTION

This proposal for decision ("PFD") addresses whether a cellular telecommunications service provider in Vermont is required to obtain a certificate of public good ("CPG") pursuant to state law, or whether that requirement has been entirely preempted by federal law. This PFD also addresses the related issue of whether existing certification requirements provide the most efficient means of tracking the activity of the cellular telecommunications service companies that provide service in Vermont. In the PFD, I recommend that the Board conclude that Vermont's CPG requirement for cellular telecommunications service providers has not been completely preempted. I further recommend that the Board modify its certification process in order to comply with the limited federal preemption of state utility regulatory authority over rates and entry, while preserving state authority over the terms and conditions of cellular telecommunications service provision.

II. PROCEDURAL BACKGROUND

In this Docket, in its Order of May 11, 1995, the Board approved the transfer of control of a cellular telecommunications service provider, NYNEX Mobile of Vermont, Inc. ("NMVT"), to NYNEX Mobile Limited Partnership 1 ("NMLP1").¹ One of the conditions of the Order was that NMLP1 should revise its tariff and file the revised tariff within 30 days of the Board's approving the

1. See, Docket 5808, Order of 5/11/95.

transfer.² The Board's Order did not, however, discuss revocation of NMVT's Certificate of Public Good ("CPG") or issuance of a new CPG to NMLP1.

Several months after the Board issued its Order in Docket 5808, NMLP1 filed its tariff with the Board. Subsequently, Francis Malnati, on behalf of NMLP1, filed a letter with the Board, dated August 22, 1995, stating that:

[I]t is NMLP1's view that CPGs are no longer required for cellular carriers. The Omnibus Budget Reconciliation Act of 1993 ["OBRA"] preempted the states from regulating the entry of cellular carriers. 47 U.S.C. § 332(c)(3)(A). Therefore, NMLP1 believes that it would be inappropriate for the Board to require NMLP1 to obtain a CPG prior to entering the Vermont cellular market.³

On March 6, 1996, the Vermont Department of Public Service ("Department" or "DPS") filed a letter with the Board arguing that while OBRA preempts the states from regulating entry of and rates charged by commercial mobile radio service ("CMRS") providers, it does not preempt states from regulating terms and conditions of service.⁴ Thus, the Department concluded, the Board "may require NMLP1 to obtain a CPG with such other terms and conditions which remain under state jurisdiction."⁵

The Board appointed me Hearing Officer to review and recommend a resolution to the question raised by Mr. Malnati's letter and addressed in the DPS's response. On April 29, 1999, I contacted the parties in this docket and provided an opportunity to file additional comments on this question by May 28, 1999.

NMLP1 (now Bell Atlantic NYNEX Mobile, Inc.) responded by letter of May 14, 1999, and stated that its position, as described by letter of August 22, 1995, has not changed.⁶ In its

2. Order of 5/11/95 at 8.

3. Letter of Francis Malnati, August 22, 1995 at 1.

4. Letter of Sheldon Katz, March 6, 1996. The services that fall within the category of CMRS are listed at 47 U.S.C. § 332(d)(1) as any mobile service (as defined at 47 U.S.C. § 153(27)) that is provided for profit and makes interconnected service available to the public. CMRS includes cellular telecommunication services.

5. *Id.*

6. Letter of David Wilson, May 14, 1999 at 1.

May 14, 1999 letter, NMLP1 added that it had reviewed the DPS letter of March 6, 1996, and that NMLP1 "remains convinced that the Omnibus Budget Reconciliation Act of 1993 exempts cellular services from any state-mandated market entry requirements such as a CPG."⁷

III. PREEMPTION

Introduction

As revised by OBRA, Section 332(c)(3) of the Communications Act of 1934 prohibits states from regulating CMRS rates and entry.⁸ The same statute, however, expressly reserves to states the authority to regulate the "other terms and conditions of commercial mobile service," although it does not specify what, precisely, is included within the purview of "other terms and conditions." Section 332 provides in pertinent part:

Notwithstanding sections 152(b) and 221(b) of this title, no state or local government shall have any authority ***to regulate the entry of or the rates charged*** by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from ***regulating the other terms and conditions*** of commercial mobile services.⁹

Discussion

The plain language of Section 332 reserves state authority over terms and conditions while explicitly proscribing state authority to regulate entry and rates. This section thus expressly preserves state authority over intrastate CMRS, except for rate and entry regulation.¹⁰

In addition to the statutory language, there is legislative history that compels the same conclusion, *i.e.*, that Congress intended to reserve state authority, other than entry and rate regulation, over CMRS services. For instance, the House of Representatives Committee on Energy and Commerce, reporting on the House bill that was incorporated into the amended Section 332,

7. *Id.* The Department's position has not changed either. Letter of Sheldon Katz, May 14, 1999.

8. 47 U.S.C. § 151 *et seq.* § 6002(b)(2) of OBRA amends § 332(c) and (d) of the Communications Act of 1934, and the amended 47 U.S.C. § 332 contains the provisions regarding preemption. The Telecommunications Act of 1996 did not amend 47 U.S.C. § 332.

9. 47 U.S.C. § 332(c)(3)(A) (emphasis added).

10. *See also Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (there exists a presumption against Federal preemption, particularly in areas of historic state authority such as public utility regulation).

noted that even where state rate regulation is preempted, states nonetheless may regulate other terms and conditions of commercial mobile radio services:

By "terms and conditions," the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (e.g., zoning); transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis or such other matters as fall within a state's lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."¹¹

Given this framework, the challenge here is to clarify the line between preempted rate and entry regulation and retained state authority over terms and conditions. Specifically at issue here is whether CMRS providers need to obtain a CPG from the Board. If not, then how is Vermont to exercise its authority over terms and conditions when its Public Service Board and Department of Public Service may not know who is providing CMRS service in the state? If yes, then -- without running afoul of § 332 -- how can the Board find that a CMRS provider's service "will promote the general good of the State" as required by Vermont's statute for issuance of CPGs?¹²

In at least three instances, the FCC has suggested a way to draw that line. In an order reviewing a petition by the State of Ohio to retain regulatory authority over intrastate cellular service rates, the FCC has stated that:

[S]everal other aspects of a state's existing regulatory systems may fall outside the statutory prohibition on rate regulation. For example, **a requirement that licensees identify themselves to the public utility commission . . .**, does not strike us as rate regulation, so long as nothing more than standard informational filings is involved.¹³

The FCC has used virtually identical language in two other orders on similar petitions from other states.¹⁴

11. H.R. Rep. No. 111, 103 Cong., 1st Sess. 2 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 588.

12. 30 V.S.A. § 231(a).

13. *In the Matter of Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services*, Docket No. 94-109, FCC 95-193, May 4, 1995. 10 FCC Rcd. 7842, 1995 WL 312498.

14. *In the Matter of Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Services*, Docket No. 94-105, FCC 95-345, August 8, 1995. 11 FCC Rcd. 796 at para. 146, 1995 WL 468206 (F.C.C.)("For example, **a requirement that licensees identify themselves to the CPUC . . .**, does not strike us as rate regulation, so long as nothing more than standard informational filings is involved."); *In the Matter of Petition of New York State Public Service*

(continued...)

Following the FCC's rationale, a requirement that CMRS providers identify themselves to the Board is not prohibited rate regulation, so long as the Board requires nothing more than standard informational filings. The same rationale would indicate that such a requirement would not constitute prohibited entry regulation either. Also, such a requirement would meet the needs of the Board and Department by readily identifying CMRS providers offering service in Vermont.

In an analogous context, states that require CMRS providers to contribute to state universal service funds currently impose this type of informational filing requirement on providers, and do not run afoul of the Section 332 proscription on state rate and entry regulation. Section 254(f) of the Telecommunications Act of 1996 provides:

A state may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and non-discriminatory basis, in a manner determined by the state to the preservation and advancement of universal service in that state.¹⁵

In 1997, the FCC adopted rules allowing states to require universal service fund contributions from wireless providers.¹⁶ In its Report and Order promulgating these rules, the FCC considered and rejected the wireless providers' claim that state USF contribution requirements established in conformity with § 254(f) of the Act conflict with § 332(c)(3)(A).¹⁷

I conclude, therefore, that requiring CMRS providers to identify themselves to the Board is not proscribed rate and entry regulation, but instead is within the reasonable exercise of the Board's lawful authority to regulate other terms and conditions of service.

IV. CERTIFICATION IN VERMONT

Introduction

14. (...continued)

Commission to Extend Rate Regulation, Docket No. 94-108, FCC 95-192, May 4, 1995. 10 FCC Rcd. No. 16 at para 76 ("For example, **a requirement that licensees identify themselves to the public utility commission** . . . , does not strike us as rate regulation, so long as nothing more than standard informational filings is involved.")

15. 47 U.S.C. § 254, added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

16. *See generally* 47 C.F.R. §§ 36, 54 and 69 (1997).

17. *See Universal Service*, 63 Fed. Reg. 2,094, 2,117 Para. 144 (1998) (citing *In re Petition of Pittencrieff Communications, Inc.*, 9 Communications Reg. (P&F) 1041, 1997 WL 606233 (FCC Oct. 2, 1997), *Universal Service*, 62 Fed. Reg. 32,862, 32,926 Para. 453 (1997)).

Pursuant to 30 V.S.A. §§ 102 and 231, firms intending to offer telecommunications services in Vermont are required to obtain a CPG by the Board.¹⁸ In the past, acquiring a CPG generally involved a substantial amount of process, in which the Board reviewed company filings, assessed whether applicants meet substantive criteria, and then, with or without hearing, conditioned and granted a certificate.¹⁹

For certain carriers, the Board's process of CPG review has changed in recent years. In order to accommodate the entry of competitive service providers, while continuing to protect Vermont consumers, the Board has significantly modified its certification criteria and review process: in 1995, for companies offering coin-operated telephone service ("COCOTS"),²⁰ and in 1999, for competitive local exchange companies ("CLECs").²¹

In order to comply with the dictates of Section 332 and to meet its obligations under 30 V.S.A. §§ 102 and 231, I recommend that the Board, likewise, devise an appropriate registration/identification process for CMRS providers in Vermont. Unlike the standard certification review, or even the more streamlined approaches for CLECs or COCOTs, the registration/identification process proposed below involves no substantial Board review nor does it condition the entry into Vermont's telecommunications market, to ensure compliance with 47 U.S.C. § 332(c)(3)(A).

Policy

The Board has observed that 30 V.S.A. §§ 102 and 231 were initially designed for two purposes: (1) to protect consumers against incompetent or dishonest businesses; and (2) to protect existing providers by limiting or eliminating their competitors.²² The first rationale for certification - consumer protection - remains one of the Board's policy objectives. The second

18. Section 102 applies for newly-formed Vermont corporations, while § 231 applies to all others.

19. See, e.g., *In re Vermont Electric Power Producers, Inc.*, 165 Vt. 282, 683 A.2d 716 (1996); see also *In re Quechee Service Co.*, 166 Vt. 50, 690 A.2d 354 (1996).

20. See Docket 5566, Order of 1/6/95 at 37-38 (COCOT certification).

21. See Docket 5713, Order of 2/4/99 at pp. 57-65 (CLEC certification).

22. *Id.* at 59.

purpose -- the franchise protection rationale -- is based on a concern for economic efficiency and the existence of natural monopoly.²³ The second purpose does not apply where competition exists.²⁴

In addition to the two purposes just mentioned, certification of providers serves administrative and informational purposes as well. Through the compilation of the names of providers, the Board and the Department are able to oversee and ensure the proper functioning of Vermont's telecommunications market, including the ongoing maintenance of the Vermont Universal Service Fund.²⁵

Certification Criteria

In order for the Board to issue a CPG under 30 V.S.A. § 102 or § 231, it is required to find that the proposed public service operations of the applicant in Vermont will "promote the general good of the state."²⁶ These statutory provisions do not specify any criteria for the Board to apply when making this finding. In the past, however, the Board has recognized that competitive markets possess two important characteristics. First, a competitive market contains numerous providers, thereby largely obviating the need to assure that the financial and managerial character of a company

23. See, e.g. Docket 5264, *Petition of MCI Telecommunications Corporation for A Certificate of Public Good, pursuant to 30 V.S.A. Section 231, to Operate a Telephone Business in the State of Vermont by Providing Intrastate Telecommunications Services*, Order of 12/13/88 at 12; Docket 5071, *Petition of GTE Sprint Communications Corporation for a Certificate of Public Good to Offer Intrastate Telecommunications Services within the State of Vermont*, Order of 10/1/86 at 9; and Docket 5012, *Petition of Burlington Telephone Company*, Order of 5/27/86 at 6.

24. Docket 4946, Order of 2/21/86. As the Board recognized in Docket 4946 when it concluded that competition should be allowed into Vermont's communications market, the resale of telephone services should be regulated in a relaxed manner and, despite the potential dangers and drawbacks inherent in competition, its benefits outweighed its flaws. *Id.* See also Docket 5472, *Joint Petition of Burlington Telephone Company d/b/a Long Distance North to Sell its Assets to RCI Long Distance New England, Inc. (RCI); and Petition of RCI for a Certificate of Public Good to Operate as a Reseller of Telephone Services in the State of Vermont*, Order of 12/24/90 at 13; Docket 5264, Order of 12/13/88 at 12; Docket 5071, Order of 10/1/86 at 9.

25. This includes keeping track of all telecommunications providers to ensure appropriate operation of the Vermont Universal Service Fund ("VUSF"), and in order to provide information and advice to the Vermont General Assembly on matters of telecommunications law and policy. See, e.g., 30 V.S.A. § 7523. Pursuant to this statute, the Board must establish the VUSF surcharge rate and enter an order setting the rate for each fiscal year. *Id.* Pursuant to her duties under 30 V.S.A. § 6, the Clerk of the Board also provides the National Exchange Carrier Association ("NECA"), the fiscal agent for the VUSF, with the names of companies as they are certified in Vermont in order for NECA to keep its records current. See also Docket 5959, Order of 6/19/97.

26. 30 V.S.A. §§ 102, 231.

meets certain standards.²⁷ If a company does not manage its business properly, it may fail, but there will be other companies to take its place. Second, customers in a competitive market have the fundamental ability to choose a competitor if their existing provider does not meet their needs.²⁸

These assumptions supported the Board's rationale, for example, in its choice to relax the certification process for COCOTS. Owners of coin-operated telephones enjoy a streamlined process, wherein they apply for and receive a CPG, but are free to install and remove phones as they see fit. Annually, providers file a report listing new and removed phones. In this fashion, concluded the Board, "essential regulatory oversight is preserved, and administrative burdens are greatly reduced."²⁹

In the CMRS context, where the Board's authority to regulate rates and entry is preempted under 47 U.S.C. § 332(c)(3)(A), the Board must still be able to ensure that Vermont consumers are afforded adequate protections with respect to other terms and conditions of service. In order to do this, I recommend that the Board adopt the following minimum filing criteria listed below for the registration of CMRS providers pursuant to 30 V.S.A §§ 102 and 231. Under this registration format, a CMRS company that completes and submits the form, *i.e.*, identifies itself to the Board, will be presumed to comply with the statutory certification standards of 30 V.S.A §§ 102 and 231. Upon receipt of a completed registration form, the Board will issue the CPG.

Registration Form

In order to facilitate the filing process, I recommend that the following registration form be adopted by the Board and used in applications by companies providing CMRS services in Vermont.³⁰ The Board would make this registration form available through the Clerk's office and through the Board's internet home page. I propose that the form require the following information:

27. In a competitive context, that company's rate of investment, financial stability, control of affiliate interests, management, technical knowledge and ability, and business reputation, though important, generally no longer require in-depth regulatory scrutiny. See *e.g.*, Docket 5454, Order of 1/8/92 at 45. "The primary purpose for financing review is to ensure that utilities do not incur unnecessary expenses which can later be collected from customers. Where rates are not tied into regulated costs of service as established by the Board, but are the product of the forces of competition, there is a lesser need for detailed prior review of such financings." Because the rates at issue here fall into the latter category – they are the product of competitive forces – it follows that a less stringent review of a firm's financial position is appropriate. *Id.*

28. Also, the service provider in this context is, by definition, not the sole provider of an essential service.

29. Docket 5566, Order of 4/24/95 at 37-38.

30. The proposed form is attached to this PFD.

- Full name, address and telephone number of the company, its registered agent in Vermont, its current directors and officers, and the contact person for the application.
- A copy of the company's Vermont Certificate of Authority (issued by the Vermont Secretary of State).
- Affidavits from a company officer certifying the truthfulness and completeness of the information provided, and the intent to fully comply with applicable Vermont statutes, Board rules and requirements.

In addition to the information on the registration form, CMRS providers should periodically file the following information:

- Annually, Company Annual Reports and a copy of Gross Revenue Tax calculations on forms available from the Department.

Complete and accurate tariffs.³¹ The Company will be required to file notice-only tariff changes for any change in rates. The Company will be required to file notice of any other changes in its terms and conditions of service at least 45 days prior to the effective date of the changes in accordance with 30 V.S.A. § 225.

V. CONCLUSION

The regulatory model that the Board has traditionally relied upon for certification of telecommunications providers has been preempted in part by 47 U.S.C. § 332(c)(3)(A) of the Communications Act of 1934. Consequently, I recommend that the Board no longer rely on its traditional certification process for CMRS providers. I further recommend that the Board adopt in its place an alternative, streamlined registration process designed for competitive CMRS providers. This process will meet the Board's needs and is a reasonable exercise of the Board's authority to regulate the terms and conditions of CMRS provision in the State of Vermont.

An informational filing requirement will be less burdensome on CMRS providers, and will ensure that CMRS providers are aware of the pertinent standards contained in Vermont statutes and Board Rules. It will enable the Board and Department to ensure appropriate operation of the

31. The filing of tariffs would involve no rate review, but would keep the Board and DPS apprised of CMRS providers' terms and conditions. Tariff filing requirements do not, by themselves, constitute rate regulation, and instead serve important consumer protection goals unrelated to traditional rate regulation. See Docket No. 5883, Hearing Officer Order of 7/30/96 at 12-13, 17; Docket No. 5454, Order of 1/8/92 at 34, 41-43, 49-51, 53-54, 56-58.

Vermont Universal Service Fund, and to perform their other duties under state law that have not been preempted. Overall, this less burdensome approach can be used to meet the needs of Vermont while allowing CMRS providers the freedom to operate in a market deemed by Congress to be competitive.

I hereby report the foregoing conclusions of law and recommendations to the Board in accordance with 30 V.S.A. § 8.

The Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 16th day of February, 2000

s/David Farnsworth

David C. Farnsworth, Esq.

Hearing Officer

VI. BOARD DISCUSSION

We have carefully examined the Department and NMLP1's comments upon the Proposal for Decision ("PFD"), including their proposals for slight modifications, discussed below. With those few exceptions, NMLP1 and the Department support the Hearing Officer's PFD. The PFD concludes that Section 332 of the Omnibus Reconciliation Act of 1993 ("OBRA") preempts state entry and rate regulation of CMRS providers. The PFD, however, also concludes that OBRA does not preempt the Public Service Board ("Board") from continuing to assure the appropriateness of CMRS terms and conditions of service in Vermont.³² To that end, the PFD also designs a registration system for CMRS providers.

The Board has generally held that CMRS should be subject to little regulation. While we have no interest in unduly burdening CMRS providers, the provision of CMRS in Vermont raises numerous economic and consumer protection implications. Consequently, we adopt the conclusions and recommendations of the Hearing Officer because his proposal to have CMRS providers register with the Board is a sensible resolution that reaches a fair balance between the needs of CMRS providers and those of the State of Vermont.

As stated above, with three exceptions, both NMLP1 and the Department support the Hearing Officer's proposal.³³ In particular, the parties have asked for minor modifications to the Hearing Officer's recommendation. They have also asked that the Board, in several instances, amend language in the Registration Form.

First, NMLP1 has requested an alternative to the tariff filing requirement contained in the proposal for decision. Explaining that it no longer uses tariffs, but rather "contract forms," NMLP1 asks that it be allowed to file the contract forms in order to keep the Board informed of the Company's terms and conditions of service. We find this to be an acceptable proposal. NMLP1,

32. We also note that the legislative history of the statute that is reviewed in his proposal for decision reserves substantial authority over CMRS services to States:

It is the intent of the Committee [in passing Section 332(c)(3)] that the states still would be able to regulate the terms and conditions of [CMRS] services. By "terms and conditions" the Committee intends to include such matters as *customer billing information and practices and billing disputes and other consumer protection matters... or such other matters as fall within a state's lawful authority*. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions." H.R. Rep. No. 111, 103d Cong., 1st Sess. 2 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 588 (emphasis added).

33. Department Comments, November 30, 1999, and NMLP1 Comments, November 29, 1999.

therefore, will be deemed to have met the tariff filing requirement by providing the Board with applicable contract forms containing all terms and conditions of service. The Company shall submit notice-only filings of any changes in terms and conditions. If and when NMLP1 changes any other terms and conditions of service, it is NMLP1's duty and responsibility to file notice of such changes at least 45 days prior to the effective date of the changes.

Second, the Department and NMLP1 have proposed minor changes to the CMRS registration form. The Department asks for two changes. One, the form should make clear that the service provider needs to include all the names under which it is doing business in Vermont. Two, the form should require an email address for the applicant. NMLP1 asks that question #9 of the registration form be amended to specify the type of business organization. We agree to the propriety of these changes, and have made them.³⁴

Finally, the Department and NMLP1 have asked the Board to expand the Hearing Officer's proposal regarding notice filing for §§ 102 and 231 certification, to meet several other statutory requirements. They have requested that the Board allow CMRS companies to submit informational filings to the Board to meet the requirements contained in 30 V.S.A. §§ 107, 108 and 109.³⁵ The Department and NMLP1 believe that the Board's approval of acquisitions of controlling interest in CMRS providers (§ 107), issuance of bonds or other evidence of indebtedness (§ 108), and sales and leases of assets (§ 109) can be facilitated through the same notification process proposed for certification under §§ 102 and 231.

We find this proposal to be sensible, and draw this conclusion for the same reasons that CMRS certification can be conducted through notice filings. CMRS providers are participants in a competitive market for cellular and other services, a very different environment than that occupied by rate of return utility service providers for whom much of this regulatory scheme was designed. As we have noted elsewhere, there are several assumptions underlying the Board's rationale in relaxing regulatory oversight. First, a competitive market contains numerous providers, thereby

34. See attached registration form.

35. The Department observed that "the notice filing procedure could usefully be applied to other approvals required under Title 30, *e.g.*, sections 107, 108 and 109." Department Comments, November 30, 1999. NMLP1 has asked that the process include section 107 and 109. NMLP1 Comments, November 29, 1999 at 2.

largely obviating the need to assure that the financial and managerial character of a company meets certain standards.³⁶ If a company does not manage its business properly, it may fail, but there will

be other companies to take its place. Second, customers in a competitive market have the fundamental ability to choose a competitor if their existing provider does not meet their needs.³⁷

NMLP1 has proposed amendments to the registration form that request information about "controlling interests" and the disposition of assets.³⁸ We adopt those changes and have incorporated them into the attached registration form.³⁹ In addition, because NMPL1's comments address the filing of information only for purposes of 30 V.S.A. §§ 107 and 109, we have added an additional line to the registration form appropriate to information necessary for § 108 determinations.

Finally, we note that, while the subject matter of this Docket has focused on NMLP1 and not on other CMRS providers, we want to make other providers aware of these changes in Board procedure. We will provide a copy of this Order to all those providers whom we can identify in order to notify them of the changes in filing requirements that we are adopting here.

However, we note that there may be other CMRS providers that are providing service in Vermont but who have not contacted the Board. Where this is the case, those providers are currently offering service without making the contribution to the Vermont Universal Service Fund which they

36. In a competitive context, that company's rate of investment, financial stability, control of affiliate interests, management, technical knowledge and ability, and business reputation, though important, generally no longer require in-depth regulatory scrutiny. See *e.g.*, Docket 5454, Order of 1/8/92 at 45. "The primary purpose for financing review is to ensure that utilities do not incur unnecessary expenses which can later be collected from customers. Where rates are not tied into regulated costs of service as established by the Board, but are the product of the forces of competition, there is a lesser need for detailed prior review of such financings." Because the rates at issue here fall into the latter category – they are the product of competitive forces – it follows that a less stringent review of a firm's financial position is appropriate. *Id.*

37. Also, the service provider in this context is, by definition, not the sole provider of an essential service.

38. The Registration Form has been amended to include question 10 which reads as follows: "For changes in controlling interest as defined in 30 V.S.A. § 107, on an attached sheet, describe the changes in ownership." NMLP1's second proposed amendment reads as follows: "For sales and leases as defined in 30 V.S.A. § 109, on an attached sheet, describe the changes in ownership."

39. In the cases of Section 107, 108 and 109 filings, companies will provide the Board with the appropriate information pursuant to questions 9, 10 and 11.

are required to do by law. Any suggestions that NMLP1 and the Department can provide that would facilitate the notification of these other CMRS providers would be useful and appreciated.⁴⁰

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The conclusions and recommendations of the Hearing Officer are adopted, except as modified above.
2. NYNEX Mobile Limited Partnership 1 ("NMLP1") shall complete and file the attached registration form.
3. In lieu of providing the Board with tariff filings, NMLP1 shall provide the Board all current terms and conditions of service through the regular submission of applicable contract forms.
4. NMLP1 shall contact the Department of Public Service and make arrangements for further filings containing company Annual Reports, and a copy of Gross Revenue Tax payments for calendar year ends on forms available from the Department.

DATED at Montpelier, Vermont, this 1st day of March, 2000.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/Suzanne D. Rude</u>)	BOARD
)	
)	OF VERMONT
<u>s/David C. Coen</u>)	

OFFICE OF THE CLERK

Filed: March 1, 2000

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

40. For example, would it be possible to ascertain the names and locations of these providers simply by consulting a list of those companies that have interconnection agreements with Bell Atlantic-Vermont?